



TOSHA INSTRUCTION

TENNESSEE DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY & HEALTH

DIRECTIVE NUMBER: CSP-TN 01-03-003

EFFECTIVE DATE: January 3, 2012

SUBJECT: Jurisdictional Coverage Reference - US DOL/OSHA and TDLWD/TOSHA.

ABSTRACT

Purpose: This directive provides guidance to assist TOSHA staff make determinations about jurisdictional coverage issues that occur between TOSHA and other regulatory agencies.

Scope: This instruction applies TOSHA-wide.

References: Tennessee Code Annotated (T.C.A.) Section 50-3-104 Scope of Chapter.

TOSHA Field Operations Manual (FOM), Tennessee Occupational Safety and Health Plan - Part V.

Memorandum of Understanding (MOU) between the U.S. Department of Labor Occupational Safety and Health Administration (OSHA) and the Tennessee Department of Labor Division of Occupational Safety and Health (TOSHA) revised October 1, 2007.

OSHA Directive CSP 01-03-002 Reference Book on Jurisdictional Issues, November 11, 1977.

Cancellations: CSP-TN 01-03-002 Jurisdictional Coverage Reference - US DOL/OSHA and TDLWD/TOSHA, November 1, 2009.

Action: Section Managers and Area Supervisors shall ensure that the objectives and concepts inherent in this directive effectively implemented.

Background: The Tennessee Department of Labor and Workforce Development Division of Occupational Safety and Health (TOSHA) has been delegated the enforcement responsibility for the provisions of the Tennessee Occupational Safety Act of 1972 (Act) by the Commissioner of Labor and Workforce Development. Since the Act was promulgated, there have been occasions when jurisdiction over specific establishments has been challenged. These challenges usually involve questions about which governmental agency is responsible for employee safety at the specific

site. This document provides general reference information about jurisdictional coverage at sites where jurisdiction has been questioned.

Guidelines:

- A.** TOSHA Managers and Area Supervisors will adhere to the areas of authority delineated in this directive. The TOSHA will maintain contact with the OSHA Regional Administrator in order to coordinate the MOU. Contact and coordination is also required at the Area Office level between the respective Area Supervisor and Section Managers. When there is a question about TOSHA jurisdiction, the following references should be consulted:

 - 1. The Tennessee Code Annotated (T.C.A.) Section 50-3-104,
 - 2. The TOSHA FOM, and
 - 3. This instruction.
- B.** When a jurisdictional or coordination question arises which cannot be resolved at the area office level, or guidance is required to make a decision, the Section Manager shall be contacted. In cases where the Manager cannot determine jurisdiction, contact the TOSHA Administrator.
- C.** The Compliance Managers shall ensure that field personnel are provided with a copy of this directive and understand its purpose and use.
- D.** Whenever potential violations of a site not covered by TOSHA are identified during the period of researching the site (as in a complaint or referral), the following procedure shall be followed:

 - 1. The compliance officer shall submit a referral form (OSHA-90) through the Supervisor to the Section Manager with specific information about the potential violation.
 - 2. The Manager will insure this information is communicated to OSHA.
 - 3. In order to track activity related to this MOU, the Area Supervisor shall copy the referral to the TOSHA Administrator through the Section Manager.
- E.** An evaluation of the MOU shall be made each year by the TOSHA Administrator's Office to insure that it remains current.

ATTACHMENT A
GUIDANCE FOR JURISDICTIONAL COVERAGE – FEDERAL/STATE

AREAS OF JURISDICTION	COVERAGE	COMMENTS
Corps Of Engineers	Federal	
Discrimination Complaints Under The OSHA Act	State	Discrimination complaints received from employees which relate to work, and a related protected activity which was violated, while under the jurisdiction of Federal OSHA shall be investigated by Federal OSHA.
Federal Agencies	Federal	
Federal Facilities/Offices (Ceded Properties)	Federal	Includes private contractors.
Federal Facilities/Offices (Non-Ceded Properties)	State	Federal employees at non-ceded sites are covered by federal OSHA.
Federal Prisons	Federal	
Government Owned/Contractor Operated Facilities (GO/CO)	Federal	
Long Shoring	Federal	
Manufacturing And Production Operations At Marine Terminals	State	TOSHA will cover all production, manufacturing and contractor operations and all activities and storage facilities directly associated with those production or manufacturing areas.
Maritime Industry	Federal	
Military Bases	Federal	
Mining Operations	Federal	Mine operations both above and below ground fall under the jurisdiction of the mine safety administration. Neither TOSHA nor OSHA have jurisdiction over employee safety in mines.
Oak Ridge National Laboratories (ORNL) Sites: K-1007 K-1225 K-1330 K-1400 K-1580 K-1007a K-1036 K-1652 (Fire Station) K-1515 (Water Treatment Plant) ED-5 East ED-7 K-1000 K-1501-H&L K-1008-F K-79	State	TOSHA also has jurisdiction over demolition and construction projects at ORNL which involves land transferred from doe to the State of Tennessee and a private sector company, UT-Batelle Development Corporation (UTBDC).
Private Sector Employers	State	Unless specifically excluded from state coverage under state law.
Railroad Employment	Federal	The Tennessee Supreme Court ruled that Tennessee OSHA has no jurisdiction over railroad employees. Tennessee statutes (T.C.A. 50, Chapter 3, Section 103) defines “employee” as “any person performing services for another under contract for hire”. TOSHA interprets this to exempt employees working directly or indirectly for the railroad,

Recreational Boat Builders	State	TOSHA will cover all applicable recreational boat building assembly line operations, except where 1915 standards apply.
Ship Building	Federal	
Tennessee National Guard Facilities	State	Federal employees at national guard facilities are covered by federal OSHA. Uniformed military personnel are not covered per executive order #12196.
Tennessee Valley Authority	Federal	Includes facilities, employees and private contractors.
U.S. Park Service	Federal	Includes facilities, employees and private contractors.
U.S. Postal Service	Federal	
Veterans Administration Facilities And Hospitals	Federal	

NOTE: ADDITIONAL SPECIFIC PROJECTS THAT WILL FALL WITHIN THE JURISDICTION OF EITHER STATE OR FEDERAL JURISDICTION AS A RESULT OF PRIVATIZATION OR OTHER LEGAL ACTIONS BY THE DEPARTMENT OF ENERGY MAY/WILL BE ADDED TO THIS LISTING AS THOSE SITUATIONS OCCUR.